

Memorandum to Senator Judith Zaffirini

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Re: Meeting Background, DOJ Phone Appointment re Voter ID Litigation

December 13, 2013

SG/TJS

This memo is to brief Z on a phone appointment with U.S. Department of Justice (DOJ) attorneys re a lawsuit against the state in which the DOJ challenges the legality and constitutionality of Texas' Voter ID law.

HOTS

- I. SG spoke with DOJ attorney John Powers who said that he wants to interview Z on a broad range of her perspective of the Voter ID law and its implementation in Texas.
 - A. The DOJ is doing preliminary research in relation to their lawsuit, *Veasey v. Perry*, a civil rights lawsuit filed in federal court challenging the legality and constitutionality of the Voter ID law.
 - B. This is not a formal deposition, but rather an informal discussion that will help inform their next steps.
- II. Although Mr. Powers would not provide a list of questions out of cautiousness with the ongoing litigation, he generally mentioned that he would be asking Z if she was aware of certain issues regarding the 2012 elections, including
 - A. instances of fraud;
 1. SG is unaware of any instances of fraud,
 2. other than sporadic cases of mail-in ballot fraud.
 - B. education efforts;
 1. The Secretary of State used federal funds from 2011 and other available funding to distribute information regarding the new law.
 2. More effectively perhaps, private group, political parties, and other interested stakeholders carried out promotional activities, e.g. the Austin city buses have advertisements in English and Spanish.

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C. Legislative actions:

1. legislative efforts to examine the election proceedings;
2. special legislative committees or actions created to examine the election proceedings; and
3. legislation enacted to affect the elections.
4. SG is not aware of any legislative efforts or actions since the passage of Voter ID.

D. instances of discrimination, including rhetoric:

1. SG is not aware of any overt instances of intentional discrimination
2. employed as a result of Voter ID.

III. SG believes that most of the questions could be easily answered through research by the DOJ attorneys themselves (e.g. legislation in 2013), however Z may have particular insights and anecdotes that could help inform their litigation research.

IV. Z recently received a letter from the Attorney General (was attached with TJS memo routed to Z this week, but not yet returned) referencing that the DOJ may contact Z and offering to represent Z if she wishes,

- A. provided she shares the state's interest in defending the suit.
- B. Because Z's interests are not aligned with the position taken by the state in this litigation, there is little to be gained from seeking representation by the OAG.

V. Since Voter ID has been implemented, there has been one major election, the November election that included the constitutional amendment ballot.

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- A. Reporting indicated that there were very little issues with implementing the new law, however
- B. many women in particular (and notably Greg Abbott) were allowed to sign an affidavit because their name on the voter laws and their driver's license differed slightly (often due to maiden names).

LOTS

- I. In 2011 the 82nd Legislature passed SB 14, relating to requirements to vote, including presenting proof of identification; providing criminal penalties (Voter ID).
- II. The Voter ID bill passed out of the Senate to engrossment on a straight party-line vote (19 yeas, 11 nays, one absent),
 - A. with Republicans voting yea and Democrats, including Z, voting nay.
 - B. The Senate later adopted the conference committee report along a similar party-line vote (19 yeas, 12 nays).
- III. In June of this year, in a case entitled *Veasey v. Perry*, several Texas residents and the U.S. Department of Justice (DOJ) sued the state in federal court to enjoin enforcement of SB 14 on the ground that the law violates both Section 2 of the Voting Rights Act and the Equal Protection Clause of the Fourteenth Amendment.
 - A. In particular, the plaintiffs' complaint alleged that the law would have a "retrogressive effect on Hispanic and African American voters" because
 - B. those voters "are more likely than Anglos to lack the photo identification" required by the law.